United Nations CCPR/C/KHM/CO/2

International Covenant on Civil and Political Rights

Distr.: General
27 April 2015

Original: English

Human Rights Committee

Concluding observations on the second periodic report of Cambodia*

1. The Human Rights Committee considered the second periodic report submitted by Cambodia (CCPR/C/KHM/2) at its 3138th and 3139th meetings (CCPR/C/SR.3138 and 3139), held on 17 and 18 March 2015. At its 3157th meeting (CCPR/C/SR.3157), held on 31 March 2015, the Committee adopted the following concluding observations.

Introduction

2. The Committee welcomes the submission of the second periodic report of Cambodia, albeit 10 years late, and the information contained therein. It expresses appreciation for the opportunity to renew its constructive dialogue with the State party's interministerial delegation on the measures that the State party has taken during the reporting period to implement the provisions of the Covenant. The Committee appreciates the written replies (CCPR/C/KHM/Q/2/Add.1) to the list of issues, which were supplemented by the oral responses provided by the delegation.

Positive aspects

3. The Committee welcomes the following legislative and institutional steps taken by the State party:

(a) The adoption of the Law on Prevention of Domestic Violence and Protection of Victims, in September 2005;

(b) The adoption of the Law on Suppression of Human Trafficking and Sexual Exploitation, in February 2008;

(c) The adoption of the Law on the Protection and the Promotion of the Rights of Persons with Disabilities, in May 2009.

4. The Committee welcomes the ratification of, or accession to, the following international instruments by the State party:

* Adopted by the Committee at its 113th session (16 March–2 April 2015).

GE.15-08272 (E)

1508272

(a) The Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, on 30 May 2002, and on the involvement of children in armed conflict, on 16 July 2004;

(b) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 30 March 2007;

(c) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, on 13 October 2010;

(d) The Convention on the Rights of Persons with Disabilities, on 20 December 2012;

(e) The International Convention for the Protection of All Persons from Enforced Disappearance, on 27 June 2013.

Principal subjects of concern and recommendations

Domestic applicability of the Covenant

5. While noting that international human rights treaties are part of Cambodian law and are directly applicable in Cambodian courts, the Committee is concerned at the apparently limited level of awareness of the provisions of the Covenant among the judiciary and the legal profession, resulting in a very small number of cases in which the provisions of the Covenant have been invoked or applied by courts in Cambodia (art. 2).

The State party should take appropriate measures to raise awareness of the Covenant among judges, prosecutors, lawyers and the public at large to ensure that its provisions are taken into account before national courts. In addition, the Committee encourages the State party to accede to the Optional Protocol to the International Covenant on Civil and Political Rights, on individual communications.

National human rights institution

6. The Committee, while welcoming the fact that a draft law on the establishment of a national human rights institution remains under review, regrets that the creation of such an institution has long been delayed (art. 2).

The Committee encourages the State party to establish an independent national human rights institution, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) (General Assembly resolution 48/134, annex).

Gender equality

7. While welcoming the measures taken by the State party to enhance the participation of women in public life, the Committee is concerned about the low representation of women in political and public sectors, particularly decision-making positions. It is also concerned about persisting stereotypes regarding the role of women in family and society, the existence of a significant gender wage gap and the concentration of women in low-income and unskilled sectors of the labour force, including the garment industry (arts. 2, 3 and 26).

The State party should reinforce its measures to ensure equality between women and men in all spheres, including by more effective implementation of the relevant legislation and policies. In that regard, it should continue to implement special interim measures to increase women's participation in political and public life. The State party should also intensify its efforts to eliminate gender stereotyping with a view to

changing the perception of women's roles in society. In addition, it should take concrete measures to reduce the gender wage gap and address all causes for that gap.

Racial discrimination

8. While the Committee notes the State party's assertion that Cambodia does not discriminate against anyone, it remains concerned about reports of discriminatory and violent acts perpetrated against ethnic Vietnamese persons (arts. 2, 26 and 27).

The State party should strengthen its efforts to combat racist attacks against ethnic Vietnamese persons. The State party should also consider developing a national action plan against racial discrimination.

Discrimination based on sexual orientation or gender identity

9. The Committee is also concerned about reports of discrimination against lesbian, gay, bisexual and transgender persons, in particular in employment and health-care settings. It notes with concern the lack of legislation expressly prohibiting discrimination on the grounds of sexual orientation or gender identity (arts. 2 and 26).

The State party should review its legislation to ensure that discrimination on grounds of sexual orientation and gender identity are prohibited. It should also conduct public awareness-raising activities to combat the social stigmatization of lesbian, gay, bisexual and transgender persons.

Gender-based violence

10. While noting the State party's efforts to combat violence against women at the legislative and policy levels, the Committee is concerned about the low number of prosecutions and convictions for gender-based violence. The Committee regrets the lack of information provided by the State party regarding reparations granted to victims of sexual violence crimes committed during the Khmer Rouge regime, as well as the lack of information on the evaluation of the results of the National Action Plan to Prevent Violence against Women (2009–2012) (arts. 3 and 7).

The State party should ensure that cases of domestic and sexual violence are thoroughly investigated, perpetrators are prosecuted and victims are adequately compensated. It should also provide mandatory training on the prosecution of cases of gender-based violence for law enforcement and judicial officers and facilitate victims' access to justice.

Impunity for serious human rights violations

11. The Committee is concerned about reports that no one has been held accountable for the extrajudicial killings, allegedly mainly perpetrated by the army, police and gendarmerie, in Cambodia since the 1991 Paris Peace Agreements (art. 6).

The Committee recalls that the State party has an obligation to investigate all cases of past human rights violations (see CCPR/C/79/Add.108, para. 11), in particular violations of article 6 of the Covenant, prosecute the perpetrators and, where appropriate, punish them and provide compensation to the families of the victims.

Excessive use of force

12. The Committee is concerned about reports of several deaths, many injuries and one enforced disappearance following repression by the security forces during various demonstrations in Phnom Penh, particularly during the demonstration on 15 September 2013, the garment workers' protest on 12 November 2013 and the gatherings held on 2 and

3 January 2014. The Committee is further concerned by the lack of any specific detailed information on the investigations carried out into these cases. Lastly, the Committee remains concerned about the legal status of municipal security guards and their role in policing demonstrations (arts. 6, 7 and 21).

The State party should investigate all allegations relating to the excessive use of force, especially the use of lethal force, by police and military personnel and ensure that the perpetrators are prosecuted and the victims adequately compensated. Furthermore, the State party should increase its efforts to systematically provide training to all security forces, including municipal security guards, on the use of force, especially in the context of demonstrations, taking due account of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

Prohibition of torture and ill-treatment

13. The Committee is concerned about reports of torture and ill-treatment of detainees by law enforcement personnel, especially in the context of police custody and for the purpose of obtaining confessions. In that regard, it regrets the absence of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions in cases of torture and ill-treatment. The Committee is concerned that confessions obtained under coercion or torture cannot be ruled out without evidence and that judges use such confessions until evidence is determined in court proceedings. It is also concerned that there is neither an independent complaints authority to deal with such complaints, nor an effective system for the prevention of torture (arts. 7, 10 and 14).

The State party should establish an independent complaints mechanism with the authority to investigate all reported allegations of and complaints about acts of torture and ill-treatment. It should also ensure that alleged perpetrators of these crimes are prosecuted and that the victims are adequately compensated. The State party should take the steps necessary to ensure that confessions obtained under torture or ill-treatment are inadmissible in court in all cases, in line with its domestic legislation and article 14 of the Covenant. In addition, the State party should speedily establish or designate a national mechanism for the prevention of torture, as provided for in the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Conditions of detention

14. While welcoming the steps taken by the State party to improve conditions of detention in prisons, the Committee notes with concern that overcrowding, inadequate health-care services, including lack of prison facilities for inmates with mental health problems, and inmates' reduced daily access to outdoor exercise remain a problem in the prison system. It is also concerned at the alleged practices of corruption within the penitentiary institutions. The Committee expresses concern regarding lengthy pretrial detention and the arbitrary confinement of prisoners after their sentences have been completed because the final judgements have not been communicated to the prison authorities (arts. 9 and 10).

The State party should adopt effective measures to reduce overcrowding in detention centres and ensure conditions of detention that respect the dignity of prisoners, in accordance with article 10 of the Covenant. It should also ensure independent and prompt investigation, and the resultant prosecution, of State officials responsible for corruption in the penitentiary. In addition, the State party should ensure that defendants are detained pending trial only when strictly required and implement alternatives to imprisonment. Urgent measures should be taken to ensure the

communication of final court judgements to prison authorities and the persons concerned.

Children in conflict with the law

15. While taking note of the information provided by the delegation regarding the status of the draft juvenile justice law, the Committee is concerned about the absence of a juvenile justice system and the fact that children are often subject to the same procedures as adults. The Committee is also concerned about the failure to ensure that minors are detained separately from adults (arts. 10, 14 and 24).

The State party should take measures to establish a comprehensive juvenile justice system in order to ensure that juveniles are treated in a manner commensurate with their age. It should also ensure the strict separation of juveniles and adults in places of detention, in compliance with international standards.

Arbitrary arrest and detention

16. The Committee is concerned about reports of arbitrary arrest and detention of homeless people, beggars, people who use drugs, children in street situations and sex workers in "social affairs", youth rehabilitation and drug rehabilitation centres. It is particularly concerned about allegations of torture, ill-treatment and other abuses committed by staff working at these institutions (arts. 7, 9 and 10).

The State party should take all measures necessary to put an end to the arbitrary arrest and detention of homeless people, beggars, people who use drugs, children in street situations and sex workers. All instances of torture and ill-treatment should be investigated and, if substantiated, the perpetrators should be prosecuted and punished.

Access to counsel

17. The Committee is concerned that, under the Code of Criminal Procedure, those who are arrested have access to a lawyer only after 24 hours in police custody. It also expresses concern over the shortage of lawyers, particularly in remote provinces, and the limited access to legal aid by persons charged with a criminal offence. The Committee notes that lack of access to counsel in these regards can substantially contribute to the torture and ill-treatment of those in custody (arts. 9 and 14).

The State party should guarantee that all aspects of its law and practice on pretrial detention are harmonized with the requirements of articles 9 and 14 of the Covenant, as expressed in general comment No. 32 (2007) on the right to equality before the courts and tribunals and to a fair trial, and general comment No. 35 (2014) on the right to liberty and security of person, including by permitting detained persons charged with a criminal offence immediate access to a lawyer from the outset of their deprivation of liberty. Access to counsel should be granted at all stages of the criminal procedure.

Trafficking in human beings

18. While noting the efforts made by the State party to combat human trafficking, the Committee is concerned about the reportedly low number of investigations and convictions and the lack of authoritative data on cases of human trafficking (art. 8).

The State party should intensify and better coordinate its efforts to combat trafficking in persons and should also consider establishing a central, authoritative agency responsible for combating human trafficking, by systematically and vigorously

investigating and prosecuting perpetrators. In addition, the State party should guarantee adequate protection, reparation and compensation to victims, including rehabilitation.

Extraordinary Chambers in the Courts of Cambodia

19. The Committee is concerned about reports that high-ranking officials of the State party have repeatedly made statements that interfere with the functioning and independence of the Extraordinary Chambers in the Courts of Cambodia, and that the statements indicate the reluctance of the State party to prosecute additional suspects of crimes perpetrated during the Khmer Rouge regime. In this regard, the Committee takes note of the response of the State party that it has not interfered with the judicial proceedings of the Extraordinary Chambers and welcomes the assurances given during the dialogue that it will not do so in the future (art. 14).

The State party should take steps to protect the full independence of the Extraordinary Chambers in the Courts of Cambodia and cooperate with the Extraordinary Chambers in the fulfilment of its functions.

Independence of the judiciary

20. The Committee is concerned about the lack of an independent and impartial judiciary and regrets the numerous allegations of corruption within the judiciary. It notes with concern that the laws on the organization of the courts, on the status of judges and prosecutors and on the organization and functioning of the Supreme Council of Magistracy, adopted in 2014, do not establish sufficient safeguards for judicial independence (art. 14).

The State party should take immediate steps to ensure and protect the full independence and impartiality of the judiciary and guarantee that it is free to operate without pressure and interference from the executive. It should undertake a review of the three laws on the judiciary with a view to reducing the competences of the Ministry of Justice and strengthening judicial independence.

Freedom of expression and association

21. The Committee is concerned about reports of killings of journalists, human rights defenders and other civil society actors. It is also concerned about reports of harassment and intimidation of journalists, human rights defenders, trade union workers, land and environmental activists and other civil society actors, as well as members of the political opposition, who continue to be prosecuted for their activities, in particular through the criminalization of defamation and other vaguely formulated offences. Moreover, the Committee is concerned about restrictions on freedom of expression imposed by the amended Law on the Election of Members of the National Assembly. While the Committee notes with appreciation that online communication and the activities of non-governmental organizations (NGOs) have been relatively unimpeded in the State party, it is concerned about reports that a draft cybercrimes law and the draft law on associations and NGOs may contain provisions restricting online communication and imposing excessive restrictions on such organizations (arts. 6, 7, 19 and 22).

The State party should ensure that everyone can freely exercise his or her right to freedom of expression and association, in accordance with articles 19 and 22 of the Covenant and the Committee's general comment No. 34 (2011) on freedoms of opinion and expression. In doing so, the State party should:

(a) Take immediate action to investigate complaints of killings and provide effective protection to journalists, human rights defenders and other civil society

actors who are subjected to intimidation and attacks owing to their professional activities;

(b) Refrain from prosecuting journalists, human rights defenders and other civil society actors as a means of deterring or discouraging them from freely expressing their opinions;

(c) Consider decriminalizing defamation and bring any other relevant provisions of the Criminal Code into line with article 19 of the Covenant;

(d) Review its current and pending legislation, including the draft laws on cybercrimes and on associations and NGOs, to avoid the use of vague terminology and overly broad restrictions, to ensure that any restrictions on the exercise of freedom of expression and association comply with the strict requirements of articles 19 (3) and 22 of the Covenant.

Right to freedom of peaceful assembly

22. The Committee is concerned about the increasing number of reports of arbitrary arrest of demonstrators and the practice of requiring them to thumbprint documents pledging to refrain from future demonstrations (art. 21).

The State party should ensure that the Law on Peaceful Demonstrations is implemented in conformity with the Covenant. It should also ensure that the exercise of the right to peaceful assembly is not subject to restrictions other than the ones permissible under the Covenant.

Right to marriage and equality of the spouses

23. The Committee is concerned that article 950 of the Civil Code provides that a woman shall not remarry until 120 days have elapsed from the day of the dissolution or annulment of her previous marriage. It is also concerned about a directive issued by the Ministry of Foreign Affairs restricting the right to marriage between foreign men and Cambodian women on the basis of the men's age and income (arts. 3, 23 and 26).

The State party should repeal provisions that discriminate on the basis of sex, age and income with regard to marriage.

Corporal punishment

24. While recognizing that corporal punishment is prohibited in schools and the penal system, the Committee is concerned that its use remains legal in the home, where it traditionally continues to be accepted and practiced as a form of discipline by parents and guardians (arts. 7 and 24).

The State party should take practical steps, including through legislative measures, where appropriate, to put an end to corporal punishment in all settings. It should encourage non-violent forms of discipline as alternatives to corporal punishment and should conduct public information campaigns to raise awareness about its harmful effects.

Participation in public affairs

25. The Committee notes with concern that the two amended laws on the National Electoral Committee and on Elections of Members of the National Assembly were adopted on 19 March 2015 without genuine consultations, a process similar to the one used in the adoption of the three fundamental laws on the judiciary in May 2014. While taking note of the State party's intention to adopt the draft law on associations and NGOs, the Committee

notes with concern the lack of transparency in the legislative process in the State party, as guaranteed by article 25 of the Covenant (art. 25).

The State party should ensure transparency in the legislative process and consider making public all draft legislation to facilitate public debate and dialogue by citizens with their representatives, taking due account of the Committee's general comment No. 25 (1996) on the right to participate in public affairs, voting rights and the right of equal access to public service.

Right to vote

26. The Committee considers that the general denial of the right to vote for convicted prisoners does not meet the requirements of article 10 (3), read in conjunction with article 25, of the Covenant. The Committee is also concerned about restrictions on the right to vote for some persons with psychosocial disabilities (arts. 2, 10, 25 and 26).

The State party should review its legislation denying all convicted prisoners the right to vote, in the light of paragraph 14 of the Committee's general comment No. 25 (1996) on article 25 of the Covenant (participation in public affairs and the right to vote). It should also ensure that its legislation does not discriminate against persons with psychosocial disabilities by denying them the right to vote on bases that are disproportionate or that have no reasonable or objective relation to their ability to vote, taking account of article 25.

Statelessness

27. The Committee is concerned about the situation of Khmer Krom and ethnic Vietnamese people who have been residing in Cambodia for generations and who have been left stateless or lack Cambodian identity documents. The Committee is also concerned about the insufficient safeguards to ensure that children born in Cambodia who would otherwise be stateless acquire Cambodian nationality and have access to identity documents (arts. 2, 24 and 26).

The State party should take all measures necessary to ensure the full enjoyment of Covenant rights by all residents, including stateless persons. It should also facilitate access to identification documentation. In addition, the State party should guarantee the right of stateless children who were born in the territory of Cambodia to stateless parents to acquire a nationality.

Rights of persons belonging to minorities

28. While acknowledging the existing legal framework, the Committee remains concerned that indigenous peoples are not sufficiently consulted in the decision-making process with respect to issues affecting their rights, including management of their communal lands and the allocation of the land for extractive industries and agribusiness. In this regard, concessions on the land they claim continue to be granted for private use. The Committee also notes with concern reports that indigenous peoples who do engage with the Government to protect their rights face significant practical obstacles.

The State party should establish an effective consultation mechanism and ensure meaningful consultation with indigenous peoples in decision-making in all areas having an impact on their rights.

Dissemination of information relating to the Covenant

29. The State party should widely disseminate the Covenant, the text of its second periodic report, the written replies to the list of issues drawn up by the Committee and the

present concluding observations among the judicial, legislative and administrative authorities, civil society and NGOs operating in the country, as well as the general public.

30. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the recommendations made by the Committee in paragraphs 11, 13 and 21 above.

31. The Committee requests the State party to provide in its next periodic report, due for submission on 2 April 2019, specific, up-to-date information on the implementation of all its recommendations and on the Covenant as a whole. The Committee also requests the State party, when preparing its next periodic report, to broadly consult civil society and NGOs operating in the country. According to General Assembly resolution 68/268, the word limit for the report is 21,200 words.